

**REMARKS**

In response to the Official Action mailed August 13, 2007, Applicants submit the following amendments and remarks. Claims 1-33 were pending. Claims 27 and 33 have been cancelled. Claims 1, 3, 25, 28 and 30 have been amended.

**REJECTION - 35 U.S.C. §112**

Claims 27, 28 and 33 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 27 and 33 have been cancelled. Amended claim 28 now depends from claim 26 and does not include a "stop element." Applicant urges that the amended claim 28 overcomes the rejection under 35 U.S.C. §112 and is allowable.

Claims 3, 4 and 8 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which Applicant regards as the invention. Specifically, the Examiner asserts that the limitation, "said component" in line 3 of claim 3 lacks an antecedent basis. In response to this objection, Applicant has amended claim 3 by replacing "component" with "compression member." Applicant urges that the amended claim 3 overcomes the rejection under 35 U.S.C. §112, second paragraph, and is allowable. Claims 4 and 8 were rejected for being dependent from claim 3 and are urged to be allowable in view of the amendment to claim 3.

**REJECTION - 35 U.S.C. §103**

Claims 1, 2, 5-7 and 9-33 are rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent Publication 2002/0143328 to *Schluzas, et al.*, in view of U.S. Patent No. 5,964,761 to *Kambin* and further evidenced by U.S. Patent

Publication 2003/0045878 to Petit et al. In response to this rejection, Applicant has amended claims 1, 25 and 30.

Amended claim 1 recites "a stopping element engageable with said sliding element base portion such that the stopping element can rotate about an exterior wall of the base portion thereby allowing the stopping element and the bone fastener to be positioned and locked in the sliding element aperture at a plurality of different angles, the stopping element also . . . ." The Examiner acknowledges that *Schluzas* does not disclose a stopping element separable and adjustable as included within the claims of the present application. To make up for this deficiency, the Examiner cites Kambin and Petit et al. Neither Kambin nor Petit et al. teach disclose or suggest a stopping element that not only allows height adjustment of the screw but also "allows the stopping element and the bone fastener to be positioned and locked in the sliding element aperture at a plurality of different angles," as recited in claim 1. Thus, *Schluzas* in view of Kambin and further evidenced by Petit et al. fails to teach disclose or suggest all elements of claim 1. Therefore, claim 1 is not obvious over *Schluzas* in view of Kambin and further evidenced by Petit et al. Claims 2, 5-24 depend from claim 1 either directly or indirectly and are not obvious over *Schluzas* in view of Kambin and further evidenced by Petit et al. at least for the same reasons as claim 1.

Amended claim 25, in part recites "a positioning means . . . said positioning means adapted to rotatably engage the second spherical surface thereby allowing the positioning means and the bone fastener to be positioned and locked in the insert at a plurality of different angles." The Examiner has treated "a positioning means" as a stopping element. Therefore, examiner's statements with respect to the stopping element apply equally to the "positioning element." The Examiner has acknowledged that *Schluzas* does not disclose "a positioning

means" separable and adjustable as included within the claims of the present application. To make up for this deficiency, the Examiner cites Kambin and Petit et al. Neither Kambin nor Petit et al. teach disclose or suggest a positioning means that not only allows height adjustment of the screw but also "rotatably engage[s] the second spherical surface thereby allowing the positioning means and the bone fastener to be positioned and locked in the insert at a plurality of different angles" as recited in claim 25. Thus, *Schluzas* in view of Kambin and further evidenced by Petit et al. fails to teach disclose or suggest all elements of claim 25. Therefore, claim 25 is not obvious over *Schluzas* in view of Kambin and further evidenced by Petit et al. Claims 26, 28-29 depend from claim 25 either directly or indirectly and are not obvious over *Schluzas* in view of Kambin and further evidenced by Petit et al. at least for the same reasons as claim 25.

Amended claim 30, in part, recites "engaging a positioner onto said bone fastener, said positioner having an engagement element that allows said positioner to engage said bone fastener and translate along the longitudinal axis of the bone fastener said positioner being adapted to rotatably engage the second spherical surface thereby allowing the positioner and the bone fastener to be positioned and locked in the insert at a plurality of different angles." The Examiner has treated "a positioner" as a stopping element. Therefore, examiner's statements with respect to the stopping element apply equally to the "positioner." The Examiner has acknowledged that *Schluzas* does not disclose "a positioner" separable and adjustable as included within the claims of the present application. To make up for this deficiency, the Examiner cites Kambin and Petit et al. Neither Kambin nor Petit et al. teach disclose or suggest a positioner that not only allows height adjustment of the screw but also allows the positioner "to rotatably engage the second

spherical surface thereby allowing the positioner and the bone fastener to be positioned and locked in the insert at a plurality of different angles," as recited in claim 30. Thus, *Schluzas* in view of Kambin and further evidenced by Petit et al. fails to teach disclose or suggest all elements of claim 30. Therefore, claim 30 is not obvious over *Schluzas* in view of Kambin and further evidenced by Petit et al. Claims 31-32 depend from claim 30 and are not obvious over *Schluzas* in view of Kambin and further evidenced by Petit et al. at least for the same reasons as claim 30.

Claims 3, 4 and 8 are rejected under 35 U.S.C. §103(a) as being obvious over *Schluzas, et al.*, in view of U.S. Patent No. 5,964,761 to Kambin and further evidenced by Petit et al., and further in view of U.S. Patent No. 5,613,968 to Lin. The Examiner cites Lin only for the teachings related to "a plurality of fingers" recited in claim 3. However, claim 3 depends from claim 1 and therefore includes all limitations of claim 1. But *Schluzas* in view of Kambin and further evidenced by Petit et al. does not teach disclose or suggest all elements of claim 1 as discussed above. And, Lin's teachings related to the "plurality of fingers" does not make up the deficiency of *Schluzas, et al.*, in view of Kambin and further evidenced by Petit et al. Therefore, *Schluzas, et al.*, in view of Kambin and further evidenced by Petit et al. and further in view of Lin cannot teach disclose or suggest all elements of claim 3. Therefore, claim 3 is not obvious over *Schluzas, et al.*, in view of Kambin and further evidenced by Petit et al., and further in view of Lin. Claims 4 and 8 depend from claim 3 and are not obvious for at least the same reasons as claim 3.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance of claims 1-26, 28-32 is earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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